THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.2305 OF 2007

DATED: 20-08-2007

Between:

Koteswara Girish

.. Petitioner

and

The Vice President-HR, Fulford (India) Limited, Link Road, Malad, Mumbai and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.2305 OF 2007

ORDER:

This writ petition is filed seeking a mandamus declaring the order, dated 20.12.2006, passed in I.A.No.88 of 2006 in I.D.No.118 of 2004, on the file of the Labour Court, Guntur- 3rd respondent herein, as arbitrary and illegal; and consequently to direct the 1st and 2nd respondents to reinstate the petitioner with continuity of service, backwages and all other benefits.

Petitioner is the workman and the respondents 1 and 2 are the management. It appears, when the services of the petitioner were terminated, he raised a dispute, being I.D.No.118 of 2004, under Section 2-A (2) of the Industrial Disputes Act (for short 'I.D. Act'), before the Labour Court, Guntur. The respondents 1 and 2 herein were served with notices and, in spite of the same, there was no appearance. Ultimately, the Labour Court, after recording the evidence of the petitioner, passed an exparte award on 14.10.2005. Thereafter, the respondents-management filed I.A.No.88 of 2006, under Section 11 (3) of the I.D. Act read with Order IX Rule 13 of the Code of Civil Procedure and Rule 24 of A.P.I.D. Rules 1958, within 30 days from the date of passing of the award, seeking to set aside the said exparte award and restore the I.D. to file. Petitioner resisted the said application. The Labour Court, having held that in spite of service of notices, the respondents have not made appearance, in the facts and circumstances of the case, allowed the application on 20.12.2006, by setting aside the award dated 14.10.2005. Aggrieved by the same, the petitioner-workman preferred the present writ petition.

Learned counsel for the petitioner strenuously contended that the

petition to set aside an award has to be construed very strictly and unless and until notice as required under law is not served or the respondent is prevented by sufficient cause to appear before the Court, the question of setting aside the award does not arise. The Labour Court ought to have seen that the only plea taken by the respondents was that no notice was served on them. When that was found to be false, it cannot be said that the respondents 1 and 2 were prevented by sufficient cause to attend before the Labour Court and, therefore, the impugned order passed by the Labour Court is arbitrary, illegal and liable to be set aside.

Learned counsel for respondents 1 and 2 supported the order passed by the Labour Court and submitted that whether there was an enquiry conducted by the management before dismissal of the petitioner or not, respondents 1 and 2 are entitled to lead evidence and prove that the action taken by them is justified. In the instant case, such a course was not followed. May be notices were served, but that does not mean that the Labour Court cannot set side the award and it went wrong in setting aside the same and restoring the I.D to file.

Learned counsel for the petitioner, in reply, submitted that in a case of this nature, where there was no enquiry whatsoever, if an opportunity is to be given to the management to lead evidence to justify its action, it must be deemed that the petitioner was under suspension and, as such, he is entitled for subsistence allowance from the date of dismissal till the date of award passed by the Labour Court.

Heard both sides. Perused the impugned order and other material made available on record.

I am of the opinion that even if the award passed by the Labour

Court on 14.10.2005 is challenged by the management, it would have met with the same fate of remanding the matter to Labour Court for fresh consideration. May be the management was absent and it did not take care of appearing before the Labout Court, but that does not mean that the petitioner is automatically entitled for the relief of reinstatement. Since the petition in I.A.No.88 of 2006 was filed within thirty days from the date of passing of the award, the Labour Court has not committed any error in setting aside the award and restoring the I.D. to file for further enquiry, calling for interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and is liable to be dismissed.

Insofar as the contention of the learned counsel for the petitioner with regard to payment of subsistence allowance to the petitioner is concerned, I am of the opinion that it is a larger question, which cannot be gone into in this writ petition. However, the petitioner is given liberty to file such an application before the Labour Court. If any such application is filed, the Labour Court shall decide the same on merits and pass appropriate orders as per law.

Subject to the above observation, the writ petition is dismissed. No costs.

C.V. RAMULU, J

20th August, 2007.

Note:

Issue order copy in ten days.

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